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APS Events, LLC *and* International Alliance of Theatrical Stage Employees, Moving Pictures Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, AFL-CIO, CLC, Local No. 19. Case 5-CA-34875

August 27, 2010

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER AND BECKER

On October 30, 2009, the Board issued a Decision and Order¹ directing the Respondent, inter alia, to make unit employees and benefit funds whole for any losses suffered as a result of the Respondent's failure to abide by the terms of the parties' collective-bargaining agreement in violation of Section 8(a)(5) and (1) of the Act. On January 5, 2010,² the United States Court of Appeals for the Fourth Circuit entered its judgment enforcing the Board's Order and issued a mandate enforcing the judgment.³ A controversy having arisen over the amount of backpay and benefit fund contributions due, on February 26, the Regional Director for Region 5 issued a compliance specification and notice of hearing identifying the amounts due under the Board's Order and notifying the Respondent that it must file a timely answer complying with the Board's Rules and Regulations.

On April 21, the Regional attorney for Region 5 received a facsimile transmission dated April 20 from the Respondent requesting the Regional Director to extend the deadline for filing an answer. By letter dated April 27, the Regional attorney advised the Respondent that the deadline was extended to May 7.

By letter dated May 7, the Respondent informed the Regional attorney that it "do[es] not dispute the allegations" set forth in the compliance specification. The Re-

² All dates are in 2010, unless otherwise noted. The compliance specification erroneously states that the court's judgment was entered on January 7. We note that the judgment was filed on January 5.

spondent also stated, without further explanation, that once it was "apparent" that payroll would not be processed in a "timely manner," the "payroll company and the job steward agreed that we could make partial payments." The Respondent ends the correspondence by stating, "I want to make this right with these men as they were great workers and a great asset to our company for many, many years."

By letter dated May 7, the Regional attorney notified the Respondent that its response had been deemed to constitute an answer to the compliance specification and that a Motion for Summary Judgment would be filed.

On May 26, the General Counsel filed a Motion for Summary Judgment. The General Counsel argues that the Respondent's letter of May 7 is a legally sufficient answer under Section 102.56 of the Board's Rules and Regulations, that the answer does not raise an issue of material fact warranting a hearing, and that he is entitled to summary judgment. Thereafter, on June 1, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56 of the Board's Rules and Regulations provides that:

- (a) Filing and service of answer; form.—Each respondent alleged in the specification to have compliance obligations shall, within 21 days from the service of the specification, file an original and four copies of an answer thereto with the Regional Director issuing the specification, and shall immediately serve a copy thereof on the other parties. The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the mailing address of the respondent.
- (b) Contents of answer to specification.—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent,

¹ 354 NLRB No. 102.

³ Although this case was decided by only two Board Members, the court's order and mandate upholding that decision became final prior to the Supreme Court's decision in *New Process Steel, L.P. v. NLRB*, 560 U.S. __, 130 S.Ct. 2635 (2010), holding that a two-member group may not exercise delegated authority when the membership of the group falls below three. In these circumstances, we regard the matters finally resolved by the court of appeals as res judicata in this proceeding. See *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371, 374–378 (1940); *Nemaizer v. Baker*, 793 F.2d 58, 65 (2d Cir. 1986) (cited with approval in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. _, 130 S.Ct. 1367, 1377 (2010)).

including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

We find that the Respondent's May 7 letter is a legally sufficient answer under Section 102.56 of the Board's Rules and Regulations.⁴ Summary judgment is appropriate when a respondent does not raise a genuine issue of material fact. *Alpha Associates*, 344 NLRB 782, 785–786 (2005). As noted above, the Respondent stated that

it "do[es] not dispute the allegations" in the compliance specification. Although the Respondent's letter also contends that the payroll company and the union steward agreed that the Respondent could make partial payments, the Respondent does not provide any further explanation regarding the partial payment arrangement, or assert that any partial payment arrangement affects its obligations under the compliance specification. In addition, the Respondent failed to file a response to the Board's Notice to Show Cause why the General Counsel's motion should not be granted. Under these circumstances, we find that the Respondent's answer does not raise a genuine issue of material fact warranting a hearing. Therefore, we grant the General Counsel's motion for summary judgment. Nick & Bob Partners, 345 NLRB 1092, 1093 (2005).

ORDER

IT IS ORDERED that the General Counsel's Motion for Summary Judgment is granted.

IT IS FURTHER ORDERED that the Respondent, APS Events, LLC, Glen Burnie, Maryland, its officers, agents, successors, and assigns, shall make whole the individuals named below by paying them the backpay amounts following their names, plus interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), accrued to the date of payment and minus tax withholdings required by Federal and State laws, and by paying to the benefit funds the total contribution amount of \$25,588.50, plus interest accrued to the date of payment.

	TOTAL	TOTAL FUND
	BACKPAY	CONTRIBUTIONS
Joseph Allen	\$24,939.00	\$ 6,339.75
Michael Ziegler	36,693.00	9,775.25
Perry Ziegler	35,094.00	9,473.50
TOTALS	\$96,726.00	\$25,588.50

Dated, Washington, D.C. August 27, 2010

Wilma B. Liebman,	Chairman
Peter C. Schaumber,	Member
Craig Becker,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

⁴ We note that the Respondent does not appear to have served the other parties with a copy of its answer. On this basis, its answer could be considered legally insufficient under Sec. 102.56(a) of the Board's Rules and Regulations. We have, however, given the Respondent the benefit of any doubt on that issue.

We further note that the Respondent's correspondence with Region 5 is signed by James T. Arth, the Respondent's president. Assuming without finding that the Respondent is not represented by counsel, we note that "the Board has shown some leniency toward respondents who proceed without benefit of counsel" in applying Sec. 102.56. See *Nick & Bob Partners*, 345 NLRB 1092, 1093 (2005), quoting *Convergence Communications, Inc.*, 342 NLRB 918, 919 (2004). We find, however that the Respondent's May 7 letter, even considered as a submission by a pro se respondent, does not raise a genuine issue of material fact. As discussed above, the Respondent has effectively admitted all allegations in the compliance specification.